IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 531 of 1988

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHER POLA PARBAT BARAD

Versus

CHITURI SAHIB,ASSTT.S.P.

Appearance:

MR HARIN P RAVAL for Petitioner

NOTICE SERVED for Respondent No. 1

NOTICE UNSERVED for Respondent No. 4

MR ST MEHTA APP for Respondent No. 5

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/09/2000

ORAL JUDGEMENT

This revision, under Section 397 read with Section 401 Cr.P.C., has been preferred by the complainant in criminal case no. 304 of 1986. It was

the case of the complainant that in the night of 28th November, 1985 ie., in the wee hours of 29th November, 1985 while going home, he passed by the house of one Karsan Punja where wife of the said Karsan Punja - Bai Dahi was shouting for help and ran out of the house. She told the complainant that her husband, her mother-in-law and her sister-in-law were trying to kill her by hanging. Thereupon, the complainant accompanied Bai Dahi to her parents. However, after two days, the accused police officers summoned the complainant and his brother Laxman to Panchayat Office. Since Laxman was not at home, the complainant went alone where he was forced to admit offence, pursuant to the complaint being C.R No. 119 of 1985 lodged by Bai Dahi. Since the complainant refused to do so, he was badly manhandled and brutally beaten. He was taken to his home and was forced to strangulate his brother Laxman. Laxman also was badly beaten. Both were taken to the Police Station at Maliya Hatina and were kept in lock up until morning from where, they were taken to Gadu Rest House and kept there till afternoon. Thereafter, they were permitted to go on condition that they should not lodge a police complaint nor should they take medical treatment. But, Laxman started vomiting blood and therefore, the next day both the brothers were admitted to hospital at Junagadh. Even in the hospital, the accused Police Officer took the thumb impression of the complainant under coercion. The accused were, therefore, alleged to have committed offence under Sections 341, 342, 346, 347, 348, 323, 325, 327, 330, 331, 388, 489, 504, 506 (2) and 114 IPC. The complaint was received by the learned Judicial Magistrate, First Class, Veraval under Sec. 202 Cr.P.C and a court inquiry was directed. The accused no. 1 made an application Exh. 3 and submitted that the accused were police officers and were assigned investigation in respect of the complaint lodged by Bai Dahi being C.R No. 119 of 1985. The complainant and his brother Laxman were interrogated in respect of the investigation in C.R No. 119 of 1985. Any act alleged to have been committed by the accused was in discharge of their duty. No prosecution, therefore, could have been loged against them without obtaining prior sanction of the Government as envisaged under Section 45 and 197 (1) CrPC. After hearing the parties, the learned Magistrate held that the alleged act of atrocity was committed by the accused police officers in course of investigation in respect of C.R No. 119 of 1985 ie., in course of discharge of their duty. No cognizance of the offence, therefore, could be taken against the accused persons without the previous sanction. In absence of the previous sanction, as envisaged under Sec. 197 (1) CrPC, the complaint was not

maintainable. Feeling aggrieved, the complainant has preferred the present revision.

It is contended that no police officer is supposed to commit atrocity either on the accused or on the witness while investigating a crime. The acts of atrocity, therefore, cannot be said to have been committed in discharge of official duty and no previous sanction, as envisaged under Sec. 197 (1) CrPC was, therefore, required. I am afraid, I am unable to accept this argument. It is categorically held that the respondent accused were entrusted investigation in respect of C.R No. 119 of 1985 and it was in connection with the said investigation that the complainant and his brother Laxman were summoned for interrogation. If, in course of investigation, the police officers resort to atrocity, the same may amount to an offence, however, it cannot be said that the offence has not been committed in discharge of official duty. If such were the interpretation, Section 197 (1) CrPC would become nugatory. The learned Magistrate, therefore, was right in holding that the complaint against the accused was not maintainable except without the previous sanction as envisaged under Sec. 197 (1) CrPC.

In view of above discussion, the revision application is dismissed. Rule is discharged.

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Prakash*